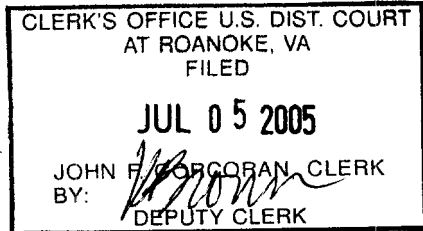


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION



ROBERT ALLEN BANE,  
Plaintiff,

v.

VIRGINIA DEPT. OF CORR., et al.,  
Defendants.

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Civil Action No. 7:05-cv-00024

MEMORANDUM OPINION & ORDER

By: Hon. James C. Turk  
Senior United States District Judge

This matter is before the court upon plaintiff's motion to reconsider the court's judgment dismissing all of plaintiff's claims for failure to state a claim, pursuant to 28 U.S.C. §1915(e)(2). Although the court will reconsider Claim 5 of plaintiff's amended complaint, the court concludes once more that the entire complaint must be dismissed, pursuant to §1915(e)(2).

Plaintiff asserts that the court failed to address his claim that defendants violated regulations enforcing the Rehabilitation Act that prohibit public entities from forcing any disabled person to accept a particular accommodation. Bane recognizes that prison officials may rightfully transfer him in order to accommodate his needs at another prison, but now argues that he has a right to refuse such a transfer if he wishes to stay at the original prison without accommodation. The facts as stated in plaintiff's previous submissions do not support any such claim. Bane admitted that officers at Augusta Correctional Center told him before his transfer that he could stay at Augusta if he would withdraw his requests for accommodation, and he chose to pursue this lawsuit instead. Tough choices are still choices.

Based on the foregoing, it is hereby

**ORDERED**

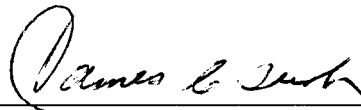
that plaintiff's motion to reconsider shall be and is hereby **GRANTED**; the court has

reconsidered plaintiff's "Claim 5," alleging that defendants forced him to accept a particular accommodation; but upon reconsideration, the court concludes that the entire action, including Claim 5, shall be and hereby is **DISMISSED** without prejudice, pursuant to 28 U.S.C.

§1915A(b)(1), for failure to state a claim, and is stricken from the active docket of the court.

The Clerk is directed to send certified copies of this memorandum opinion and order to plaintiff and to counsel of record for the defendants.

ENTER: This 2<sup>nd</sup> day of July, 2005.

  
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Senior United States District Judge